

110TH CONGRESS
1ST SESSION

H. R. 2997

To require the Secretary of Agriculture and the Commissioner of Food and Drugs to establish a program requiring a certificate of assured safety for imported food items.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2007

Ms. KAPTUR (for herself and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Agriculture and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Secretary of Agriculture and the Commissioner of Food and Drugs to establish a program requiring a certificate of assured safety for imported food items.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Assured Food Safety
5 Act of 2007”.

1 **SEC. 2. CERTIFICATE OF ASSURED SAFETY PROGRAM.**

2 (a) PROGRAM.—The Secretary of Agriculture and the
3 Commissioner of Food and Drugs shall jointly establish
4 a program to require all food items imported into the
5 United States to bear a certificate of assured safety issued
6 by the government of the country from which the item is
7 imported. In conducting such program, the Secretary and
8 the Commissioner shall—

9 (1) establish requirements for a food item to be
10 issued a certificate of assured safety by the govern-
11 ment of the country from which the food item is to
12 be imported into the United States; and

13 (2) prohibit a food item that does not bear a
14 certificate of assured safety from being imported
15 into the United States.

16 (b) EXEMPTIONS.—The Secretary and the Commis-
17 sioner may exempt from the requirements of the program
18 established under subsection (a) a food item that is im-
19 ported—

20 (1) from a country that has not been the source
21 of a contaminated food item resulting in a signifi-
22 cant health or safety recall in the preceding 5 years,
23 as determined by—

24 (A) in the case of meat and poultry food
25 items, the Secretary; and

1 (B) in the case of all other food items, the
2 Commissioner; or

3 (2) in a de minimis volume, as determined by—

4 (A) in the case of meat and poultry food
5 items, the Secretary; and

6 (B) in the case of all other food items, the
7 Commissioner.

8 (c) FAILURE TO PROVIDE ASSURED LEVEL OF
9 SAFETY.—

10 (1) PROHIBITION.—If a food item fails to pro-
11 vide the level of safety assured in the certificate re-
12 quired under this section for such item, the Sec-
13 retary and the Commissioner shall prohibit the im-
14 portation of any food item that is the same type of
15 food, is produced by the same person, and is pro-
16 duced in the same country until the Secretary or the
17 Commissioner, as appropriate—

18 (A) is given an opportunity to inspect the
19 place of production of the food to determine
20 whether appropriate corrections have been
21 made; and

22 (B) determines that such country has
23 taken sufficient steps to identify and correct the
24 failure.

1 (2) HEIGHTENED INSPECTION.—For a period
2 of 3 years after removing a prohibition against im-
3 portation of a food item described in paragraph (1),
4 the Secretary and the Commissioner shall require a
5 heightened inspection of any such food item to pro-
6 vide reasonable assurance to consumers of their
7 safety.

8 **SEC. 3. REPORTS.**

9 (a) FOOD ITEMS SUBJECT TO RECALLS.—Not later
10 than February 15 of each year, the Secretary and the
11 Commissioner shall jointly submit to Congress a report
12 containing—

13 (1) the volume of imported food items subject
14 to recalls; and

15 (2) the volume of recoveries of such imported
16 food items.

17 (b) SUFFICIENCY OF FOOD SAFETY.—Not later than
18 3 years after the date of the enactment of this Act, and
19 every 3 years thereafter, the Secretary and the Commis-
20 sioner shall jointly conduct a study and submit a report
21 to the Congress on the sufficiency of food safety and im-
22 proved food safety technologies.

23 (c) AMOUNT OF FOOD INSPECTION.—

1 (1) STUDY.—The Secretary and the Commis-
2 sioner shall jointly conduct a study on inspection of
3 imported food to determine—

4 (A) the minimum amount of inspection
5 necessary to assure consumers of a safe food
6 supply; and

7 (B) the additional cost of allocating re-
8 sources for inspecting imported food in order to
9 achieve such minimum amount.

10 (2) REPORT.—Not later than 1 year after the
11 date of the enactment of this Act, the Secretary and
12 the Commissioner shall submit to Congress a report
13 containing the results of the study conducted under
14 subsection (a).

15 **SEC. 4. MINIMUM INSPECTIONS.**

16 Not later than 1 year after the date of the submission
17 of the report under section 3(c), the Secretary and the
18 Commissioner shall ensure that the amount of imported
19 food inspected by the Secretary and the Commissioner is
20 not less than the amount determined necessary under sec-
21 tion 3(c) to assure consumers of a safe food supply.

22 **SEC. 5. USER FEES REGARDING INSPECTIONS OF IM-**
23 **PORTED FOOD SAFETY.**

24 (a) IN GENERAL.—

1 (1) ASSESSMENT.—Beginning in fiscal year
2 2008, the Secretary and the Commissioner shall
3 jointly assess and collect fees on food imported into
4 the United States.

5 (2) PURPOSE OF FEES.—The purpose of fees
6 under paragraph (1) is to defray increases in the
7 costs of the resources allocated for inspecting im-
8 ported food in order to comply with section 4 over
9 the costs of the resources allocated for inspecting
10 imported food in fiscal year 2007 multiplied by the
11 adjustment factor. Increases referred to in the pre-
12 ceding sentence include increases in such costs for
13 an additional number of full-time equivalent posi-
14 tions in the Department of Agriculture and the De-
15 partment of Health and Human Services to be en-
16 gaged in carrying out such section.

17 (3) AMOUNT OF FEE; COLLECTION.—A fee
18 under paragraph (1) shall be assessed on each line
19 item of food, as defined by the Secretary and the
20 Commissioner by regulation. The amount of the fee
21 shall be based on the number of line items, and may
22 not exceed \$20 per line item, notwithstanding sub-
23 section (b). The liability for the fee constitutes a
24 personal debt due to the United States, and such li-
25 ability accrues on the date on which the food is im-

1 ported into the United States. The Secretary and
2 the Commissioner may coordinate with and seek the
3 cooperation of other agencies of the Federal Govern-
4 ment regarding the collection of such fees.

5 (b) TOTAL FEE REVENUES.—The total fee revenues
6 collected under subsection (a) for a fiscal year shall be
7 the amount appropriated under subsection (f)(3).

8 (c) ADJUSTMENTS.—

9 (1) INFLATION ADJUSTMENT.—With respect to
10 the amount of total fee revenues referred to in sub-
11 section (b), the amount authorized in subsection
12 (f)(3) for a fiscal year shall be adjusted by the Sec-
13 retary and the Commissioner (and as adjusted shall
14 be published in the Federal Register) to reflect the
15 greater of—

16 (A) the total percentage change that oc-
17 curred during the preceding fiscal year in the
18 Consumer Price Index for all urban consumers
19 (all items; U.S. city average); or

20 (B) the total percentage change for such
21 fiscal year in basic pay under the General
22 Schedule in accordance with section 5332 of
23 title 5, United States Code, as adjusted by any
24 locality-based comparability payment pursuant

1 to section 5304 of such title for Federal em-
2 ployees stationed in the District of Columbia.

3 (2) ANNUAL FEE ADJUSTMENT.—Not later
4 than 60 days after the end of each fiscal year begin-
5 ning after fiscal year 2008, the Secretary and the
6 Commissioner, subject to not exceeding the max-
7 imum fee amount specified in subsection (a)(3),
8 shall adjust the amounts that otherwise would under
9 subsection (a) be assessed as fees during the fiscal
10 year in which the adjustment occurs so that the
11 total revenues collected in such fees for such fiscal
12 year equal the amount applicable pursuant to sub-
13 section (b) for the fiscal year.

14 (d) FEE WAIVER OR REDUCTION.—The Secretary
15 and the Commissioner shall grant a waiver from or a re-
16 duction of a fee assessed under subsection (a) where the
17 Secretary and the Commissioner find that the fee to be
18 paid will exceed the anticipated present and future costs
19 incurred by the Secretary and the Commissioner in car-
20 rying out section 4 (which finding may be made by the
21 Secretary and the Commissioner using standard costs).

22 (e) ASSESSMENT OF FEES.—

23 (1) LIMITATION.—Fees may not be assessed
24 under subsection (a) for a fiscal year beginning after
25 fiscal year 2008 unless the amount appropriated for

1 salaries and expenses of the Department of Agri-
2 culture and the Food and Drug Administration for
3 such fiscal year is equal to or greater than the
4 amount appropriated for salaries and expenses of
5 the Food and Drug Administration for fiscal year
6 2008 multiplied by the adjustment factor applicable
7 to the fiscal year involved, except that in making de-
8 terminations under this paragraph for the fiscal
9 years involved there shall be excluded any amounts
10 collected as fees for purposes of funding the inspec-
11 tion of food or other items being imported.

12 (2) AUTHORITY.—If the Secretary and the
13 Commissioner do not assess fees under subsection
14 (a) during any portion of a fiscal year because of
15 paragraph (1) and if at a later date in such fiscal
16 year the Secretary and the Commissioner may assess
17 such fees, the Secretary and the Commissioner may
18 assess and collect such fees, without any modifica-
19 tion in the rate of the fees, at any time in such fiscal
20 year notwithstanding the provisions of subsection
21 (a)(3) relating to the time at which fees are to be
22 paid.

23 (f) CREDITING AND AVAILABILITY OF FEES.—

24 (1) IN GENERAL.—Fees collected for a fiscal
25 year pursuant to subsection (a) shall be credited to

1 the appropriation accounts for salaries and expenses
2 of the Department of Agriculture and the Food and
3 Drug Administration and shall be available in ac-
4 cordance with appropriation Acts until expended
5 without fiscal year limitation. Such sums as may be
6 necessary may be transferred from the Department
7 of Agriculture and the Food and Drug Administra-
8 tion salaries and expenses appropriation accounts
9 without fiscal year limitation to such appropriation
10 accounts for salaries and expenses with such fiscal
11 year limitation. The sums transferred shall be avail-
12 able solely for carrying out section 4.

13 (2) COLLECTIONS AND APPROPRIATION ACTS.—

14 The fees authorized in subsection (a)—

15 (A) shall be collected in each fiscal year in
16 accordance with subsections (a)(3) and (b); and

17 (B) shall only be collected and available for
18 the purpose specified in subsection (a)(2).

19 (3) AUTHORIZATION OF APPROPRIATIONS; AL-
20 LOCATIONS BY SECRETARY AND COMMISSIONER.—

21 Subject to paragraph (4), there is authorized to be
22 appropriated the amount determined by the Sec-
23 retary and the Commissioner under section 3(c) to
24 be necessary to comply with section 4 for each of the
25 fiscal years 2008 through 2012.

1 (4) OFFSET.—Any amount of fees collected for
2 a fiscal year under subsection (a) that exceeds the
3 amount of fees specified in appropriation Acts for
4 such fiscal year shall be credited to the appropria-
5 tion accounts of the Department of Agriculture and
6 the Food and Drug Administration as provided in
7 paragraph (1), and shall be subtracted from the
8 amount of fees that would otherwise be authorized
9 to be collected under this section pursuant to appro-
10 priation Acts for a subsequent fiscal year.

11 (g) COLLECTION OF UNPAID FEES.—In any case
12 where the Secretary and the Commissioner do not receive
13 payment of a fee assessed under subsection (a) within 30
14 days after it is due, such fee shall be treated as a claim
15 of the United States Government subject to subchapter
16 II of chapter 37 of title 31, United States Code.

17 (h) CONSTRUCTION.—This section may not be con-
18 strued as requiring that the number of full-time equivalent
19 positions in the Department of Agriculture or the Depart-
20 ment of Health and Human Services, for officers, employ-
21 ees, and advisory committees not engaged in inspecting
22 imported food be reduced to offset the number of officers,
23 employees, and advisory committees so engaged.

24 (i) DEFINITION OF ADJUSTMENT FACTOR.—For
25 purposes of this section, the term “adjustment factor” ap-

1 plicable to a fiscal year is the Consumer Price Index for
2 all urban consumers (all items; United States city average)
3 for April of the preceding fiscal year divided by such Index
4 for April 2007.”.

5 **SEC. 6. PRIVATE CAUSE OF ACTION.**

6 (a) IN GENERAL.—Any person aggrieved by the fail-
7 ure of any food item to meet the level of safety assured
8 in the certificate required for that food item under section
9 2(a) may bring a civil action in a United States district
10 court against the person who imported the food item.

11 (b) DAMAGES.—In an action brought pursuant to
12 subsection (a), the court may award actual damages, equi-
13 table relief, and any litigation costs reasonably incurred.

14 **SEC. 7. CRIMINAL PENALTIES.**

15 If any person imports a food item into the United
16 States knowing that such food item does not comply with
17 the assurance of safety for such food item in the certificate
18 required for that food item under section 2(a), such person
19 is deemed to be in violation of section 1001 of title 18,
20 United States Code (relating to fraudulent and false state-
21 ments in any matter within the Government).

22 **SEC. 8. DEFINITIONS.**

23 In this Act:

24 (1) The term “Commissioner” means the Com-
25 missioner of Food and Drugs.

- 1 (2) The term “Secretary” means the Secretary
2 of Agriculture.

